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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re P.J. et al., Persons Coming Under the
Juvenile Court Law.

KINGS COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

MELODY S.,

Defendant and Appellant.

In re P.J. et al., Persons Coming Under the
Juvenile Court Law.

KINGS COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

PERRY J.,

Defendant and Appellant.

F067853

(Super. Ct. No. 00J0335)

OPINION

F067978

(Super. Ct. No. 00J0335)

THE COURT*

APPEAL from orders of the Superior Court of Kings County. Jennifer Giuliani,
Judge.

Janette Freeman Cochran, under appointment by the Court of Appeal, for
Defendant and Appellant, Melody S.

* Before Levy, Acting P.J., Kane, J., and Detjen, J.

Gregory M. Chappel, under appointment by the Court of Appeal, for Defendant and Appellant, Perry J.

Colleen Carlson, County Counsel, and Juliana F. Gmur, Deputy County Counsel, for Plaintiff and Respondent.

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Appellants Perry J. and Melody S. appeal from the juvenile court's order terminating their parental rights (Welf. & Inst. Code, § 366.26)¹ as to their 3-year-old daughter, P.J., and 20-month-old son, J.S. Perry and Melody contend the juvenile court erred in failing to apply the beneficial sibling relationship exception to termination of parental rights. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Melody is the mother of six children, including P.J. and J.S., the subjects of this appeal, and their teenage half-sister, T.P. Melody's parental rights as to her other three children were terminated in prior dependency proceedings. Melody and Perry have extensive criminal histories.

These dependency proceedings were initiated in July 2012 after Melody beat then 16-year-old daughter T.P. with a spiked belt, leaving bruises and welts. Melody was arrested and charged with child cruelty and the children, T.P., P.J., then 20 months old, and J.S., then one month old, were taken into protective custody by the Kings County Human Services Agency (agency). The children were placed together in foster care.

The agency recommended the juvenile court deny Melody and Perry reunification services and set a section 366.26 hearing to select a permanent plan for the children. The agency informed the court that the children's foster mother was not willing to adopt them

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

but would keep the two youngest for a year and T.P. longer. The agency intended to locate a family that would take all three children.

In January 2013, the juvenile court denied Melody and Perry reunification services and set a section 366.26 hearing for April 2013. Melody challenged the setting hearing by writ petition which this court denied (*Melody S. v. Superior Court* (Mar. 27, 2013, F066493) [nonpub. opn.]).

The section 366.26 hearing was conducted in August 2013. In May, P.J. and J.S. were placed with a couple who wanted to adopt them. The couple had been married for 19 years and was considered experienced in parenting, having raised two teenage daughters. The adoptive father was a detective with the sheriff's department and the adoptive mother was employed with the City of Lemoore. The agency considered the children adoptable given their young age and good health. It recommended the court select a permanent plan of adoption for P.J. and J.S.

Also during this interim period, T.P. struggled as a result of her separation from her younger siblings and her fear of losing contact with them. She reported to the social worker that she had seen the adoptive parents at Melody's house buying and using drugs. T.P. did not think they would be appropriate caretakers for her siblings. The adoptive parents denied ever having been at Melody's house. The father stated he was familiar with Melody through his duties as a law enforcement officer. The mother said she had no knowledge of Melody or her home.

In addition, T.P. wrote a letter asking the juvenile court not to free P.J. and J.S. for adoption but to make her their legal guardian. She said she raised them from birth and considered herself their mother. She begged the court not to take her "joy away." She explained that she was prohibited from having a relationship with her other siblings. She saw her brother at school but he would not speak to her because his adoptive family would not permit it. She feared the same would happen once P.J. and J.S. were adopted. She promised to get a place to live and a job so she could raise them properly. The

agency attached and incorporated her letter into a report it filed with the juvenile court for the section 366.26 hearing.

In May 2013, the juvenile court ordered T.P. into long-term foster care. At the hearing, Melody's attorney told the court Melody would be transported to state prison any day. Melody said she would be released from custody in early October 2013. In June, Perry was incarcerated with an anticipated release date in October 2014.

In August 2013, T.P. moved to a foster home near a community college where she was a full time student. She reported being very excited about college. She also had monthly visits with P.J. and J.S. She played with them and fed them snacks and they hugged at the end of the visit.

In an addendum report, the agency informed the juvenile court that P.J. and J.S. had been with their adoptive parents for three and a half months and were doing well. The adoptive parents said they loved the children very much and wanted to proceed with adoption. They were also open to visitation between T.P. and the children in public or neutral settings but not at their home. They were concerned that T.P. would reunify with Melody after Melody's release from prison and expose P.J. and J.S. to Melody's criminal lifestyle. They were also cautious about contact with T.P. because of the false statement she made against them. They were not interested in a post adoption contract.

In August 2013, the juvenile court conducted a contested section 366.26 hearing as to P.J. and J.S. Melody and Perry appeared in custody. Social worker Julie Flores testified that T.P., P.J. and J.S. were placed together from July 2012 to May 2013. P.J. and J.S. appeared to have a close relationship with T.P. who assumed a role of big sister and mother to them. They responded favorably to her and during one visit, J.S. called her "mamma." However, they looked to their adoptive parents to comfort them and meet their daily needs. Further, Flores did not believe that T.P. was able to assume custody of P.J. and J.S. and she did not believe it would be detrimental to them to terminate Melody and Perry's parental rights given their young age and adoptability. She acknowledged

P.J. and J.S. had a strong relationship with T.P. and understood her concern about preserving their sibling relationship.

Melody and Perry testified they had a parent/child bond with P.J. and J.S. and opposed termination of their parental rights. They joined T.P.'s request that the court order guardianship so that T.P. could maintain contact with the children.

At the conclusion of the hearing, the juvenile court determined that terminating Melody and Perry's parental rights would not be detrimental to P.J. and J.S. The court found that P.J. and J.S. were adoptable and terminated Perry and Melody's parental rights. This appeal ensued.

DISCUSSION

Perry and Melody (appellants) contend P.J. and J.S. have such a strong sibling bond with T.P. that terminating their parental rights to the children would be detrimental. We disagree.

Once the juvenile court has terminated reunification services, its focus shifts to the child's needs for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) If, as here, the child is likely to be adopted, adoption is the norm. (*In re Celine R.* (2003) 31 Cal.4th 45, 53 (*Celine R.*)) The statutory presumption is that termination is in the child's best interests and not detrimental. (§ 366.26, subd. (b); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.)

The juvenile court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances in section 366.26 provides a compelling reason for finding that termination of parental rights would be detrimental to the child. (*Celine R., supra*, 31 Cal.4th at p. 53.) Further, it is an opposing party's burden to show that termination would be detrimental under one of the statutory exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

The sibling relationship exception to terminating parental rights applies when the juvenile court finds there is a compelling reason for determining termination would be

detrimental to the child because it would substantially interfere with that child's sibling relationship. (§ 366.26, subd. (c)(1)(B)(v).) Factors to be considered include the nature and extent of the relationship, whether the child was raised with a sibling in the same home and whether the child has a strong bond with a sibling. The court must also consider whether ongoing contact is in the child's best interests, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. (*Ibid.*) The purpose of this exception is to preserve long-standing sibling relationships that "serve as anchors for dependent children whose lives are in turmoil." (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.)

"The sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) Similar to the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), application of the sibling relationship exception requires a balancing of interests. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951.) The parent must first show: (1) the existence of a significant sibling relationship; (2) terminating parental rights would substantially interfere with that relationship; and (3) it would be detrimental to the child if the relationship ended. (*Id.* at p. 952.) After the parent shows a sibling relationship is so strong that its severance would be detrimental to the adoptive child, the court then decides whether the benefit to the child of continuing the sibling relationship outweighs the benefits of adoption. (*Id.* at pp. 952–953; *In re Naomi P.* (2005) 132 Cal.App.4th 808, 823.)

When a juvenile court rejects a detriment claim and terminates parental rights, the appellate issue is not whether substantial evidence exists to support the court's rejection of the detriment claim but whether the juvenile court abused its discretion in so doing. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) For this to occur, the proof offered would have to be uncontradicted and unimpeached so that discretion could be exercised only in one way, compelling a finding in favor of the appellant as a matter of law.

(*Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Based on our review of the record, we conclude the juvenile court properly exercised its discretion in rejecting appellants' argument.

P.J. and J.S. were very young when they were removed from Melody's custody — P.J. was only 20 months old and J.S. was one month old. They lived in the family home with T.P. from birth and for approximately another 10 months in foster care. During that time, T.P. cared for them not only as their older sister, but also as a mother would her children. They developed what Flores described as a "strong relationship."

Appellants argue P.J. and J.S. had more than a strong relationship with T.P. They claim she had a "strong bond" with them. Assuming they are correct, the beneficial sibling relationship does not apply. To establish the beneficial sibling relationship exception, appellants had to show that severing the sibling relationship would cause P.J. and J.S. detriment. Here, there is no evidence the children would suffer any harm without a continued relationship with T.P. They were adjusting well to their adoptive parents and looked to them to meet their needs.

Further, there is no reason to believe that terminating appellants' parental rights will substantially interfere with P.J. and J.S.'s relationship with T.P. The adoptive parents stated they would allow T.P. to visit the children. Their gesture reflects they acknowledge the value of preserving the sibling relationship and are amenable to accommodating it. Conceivably, P.J. and J.S. could enjoy a fuller sibling relationship with T.P. over time if circumstances permit.

We find no abuse of discretion and affirm.

DISPOSITION

The orders terminating appellants' parental rights are affirmed.